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E-filing

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

KIRBY MARTENSEN,

Plaintiff,

vs.

WILLIAM KOCH and DOES  
1-25, inclusive,

Defendants.

Case No.

12 5257

**COMPLAINT FOR DAMAGES**

JSC

Plaintiff, KIRBY MARTENSEN, alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1332. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1332 because the plaintiff and defendant are citizens of different states and the amount in controversy exceeds \$75,000. Jurisdiction under 28 U.S.C. § 1331 is conferred on this Court because the action arises under 42 U.S.C. § 1983 and alleges violation of the Constitution.

2. Venue in the Northern District of California is proper because part of the conduct at issue in this action occurred in Northern California.

**PARTIES**

3. Plaintiff KIRBY MARTENSEN (hereafter “Martensen” or “Plaintiff”) resides in Berkeley, California.

4. Plaintiff has information and believes Defendant WILLIAM KOCH is a resident of the Florida.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate or otherwise of DOES 1 through 25 herein, and prays leave of Court to insert the true names and capacities of such Defendants when they become known or ascertained together with appropriate charging allegations.

6. Plaintiff is informed and believes and thereupon alleges that at all times relevant to this litigation, defendants and each of them, acted in concert and/or conspired to cause the harm and damages alleged herein.

**STATEMENT OF FACTS**

7. Prior to and until March 22, 2012, Plaintiff Kirby Martensen was an executive employee of companies owned and/or controlled by William Koch including Oxbow Carbon & Minerals, Inc. (“OCM”), Oxbow Carbon & Minerals International (“OCM International”), or one of their affiliated companies. Martensen held various managerial and/or executive positions with OCM.

8. Each year, through its subsidiaries and affiliates, Oxbow Carbon supplies millions of metric tons of petroleum coke and steam coal by vessel, rail, barge and truck to customers throughout the United States and countries located throughout the world. Oxbow Carbon is the largest distributor of petroleum coke in the world, with annual shipments of nearly 11 million metric tons. Oxbow Carbon exports petroleum coke worldwide into the European, Latin American and Pacific Rim markets. Oxbow Carbon, through OCM and OCM International, sells significant amounts of “pet” coke and coal throughout Asia, shipping millions of metric tons of product to that region each year.

9. In late 2011, Defendant Martensen was promoted to the position of Senior Vice

1 President-Asia with OCM International, and relocated to OCM International's Singapore office.  
2 OCM agreed to give plaintiff a 40% salary increase, provide him with two leased vehicles, and  
3 pay his household expenses including rent, utilities, appliances and house cleaning if he and his  
4 family relocated. OCM also agreed to fully cover the cost of his children's education.

5 10. Martensen understood that the goal of this assignment was to help legitimize  
6 OCM's Bahamian shell company. This included, but was not limited to, discussions and  
7 negotiations concerning the sourcing of pet-coke and sales to Asian customers. Plaintiff was  
8 informed that the move to Asia was for tax purposes. More than 75% of Oxbow's fuel-grade  
9 petroleum coke export profits were derived from its Asian trading business. Plaintiff has  
10 information and believes this relocation was part of a plan being implemented to evade paying  
11 taxes to the United States on profits in excess of \$200,000,000 per year.

12 11. In 2011, William Koch was notified of an anonymous letter alleging that  
13 Martensen and another employee Larry Black had been engaging in theft, breaches of fiduciary  
14 duty, fraud, and self-dealing against the Oxbow companies. Based on this information William  
15 Koch directed a lengthy comprehensive forensic review of thousands of documents, including the  
16 written corporate communications files (letters, memoranda, electronic corporate  
17 communications, etc.) of several employees, including Martensen.

18 12. Based on this surreptitious review of Plaintiff's emails and voice communications  
19 Koch learned that Martensen and others expressed concern of the legality of what they were  
20 doing on behalf of Oxbow and their distrust of upper management. As a result, William Koch  
21 promoted and implemented a plan to intimidate and discredit Plaintiff for the purpose of chilling  
22 his speech and damaging his credibility.

23 13. In early 2012 Martensen and other executive employees of OCM International  
24 (Larry Black, Charlie Zhan, Joe Lombardi, Rich Ansley and Bruce Taverner) were directed to  
25 attend a meeting with William Koch and others at William Koch's property known as Bear Ranch  
26 located near Aspen, Colorado. Bear Ranch is accessible only through a private road owned and  
27 maintained by Mr. Koch. The meeting was scheduled for March 21 and March 22, 2012.  
28 Martensen was directed to attend the meeting under false pretenses.



1           14.     On the morning of March 21, 2012, Martensen flew directly from San Francisco  
2 to Aspen, Colorado. He arrived just before noon and was met at the airport by William Koch.  
3 After lunch in Aspen, Martensen, Koch and others drove to Bear Ranch to have dinner and spend  
4 the night.

5           15.     There was no cell reception or WI-FI connection at the ranch. Martensen had no  
6 way to communicate with the outside world.

7           16.     Martensen and other guests had breakfast at the ranch the next morning followed  
8 by a business meeting. Martensen and others were then invited by Mr. Koch to tour his Western  
9 town nearby – a collection of approximately 50 buildings designed to appear like an authentic late  
10 19<sup>th</sup> century western town. This was followed by a helicopter tour of the ranch and a lunch  
11 hosted by Mr. Koch in one of the town meeting rooms.

12           17.     Following lunch Martensen and others were told by Mr. Koch that they would be  
13 interviewed by a compensation specialist as part of a 360 degree peer review. Martensen was then  
14 escorted to a small room and interviewed by two agents of Koch. The interview turned into an  
15 interrogation that lasted several hours. Martensen was accused of participating in a wide-ranging  
16 scheme to defraud Oxbow and Koch of millions of dollars, accepting bribes from competitors and  
17 “diverting freight to a known competitor.”

18           18.     Following the interrogation Martensen was escorted to a SUV and directed to sit in  
19 back. It was now approximately 5:00 p.m. Just outside of town the vehicle stopped, windows  
20 were rolled down, and Martensen was served with his termination papers and a lawsuit. As the  
21 vehicle returned to the ranch, Martensen asked where he was being taken. He was told by the  
22 driver that he would be taken to Aspen. Martensen then was driven to the main house on the  
23 ranch to collect his belongings.

24           19.     When collecting his belongings an agent of William Koch searched his suitcase  
25 and toiletries. Martensen then was escorted to a SUV and driven to a nearby cabin on the ranch.  
26 The driver then ordered Martensen to get out of the vehicle and escorted him to a cabin. While  
27 escorting Martensen the driver told Martensen, "A sheriff is here to make sure you don't wander  
28 off." Martensen observed a marked police vehicle parked nearby with a man in uniform behind

1 the wheel. The police vehicle was clearly visible from the window of the room in which  
2 Martensen was imprisoned.

3 20. After three hours of captivity Martensen was told to collect his things and that he  
4 would be taken to an airport. Martensen was directed to get in a SUV with a former co-worker,  
5 Charlie Zahn, and two agents of William Koch (driver and escort). Martensen asked to be driven  
6 to Aspen because he had a scheduled flight from Aspen to San Francisco the next morning. This  
7 request was denied. Martensen was told that he was being taken to Denver. Martensen then was  
8 kidnapped and kept captive in the vehicle during the trip to Denver.

9 21. Martensen was driven to a small airport in the Denver area and escorted to a  
10 private plane. It was now approximately 2:00 a.m. on March 23, 2012. Martensen and Zahn  
11 were ordered to get into the plane. The private jet was manned by a pilot, co-pilot and escort  
12 Martensen believed was armed. The plane landed in Oakland, California at approximately 4:00  
13 a.m. On arrival Martensen was told that a car was waiting to take him to a nearby Marriot  
14 Courtyard Hotel. Martensen refused the request and asked an airport employee to call a cab. A  
15 cab arrived and Martensen left.

#### 16 DAMAGES

17 22. As a result of the acts and omissions alleged herein plaintiff Kirby Martensen has  
18 suffered, and continues to suffer, general damages including fear, anxiety, humiliation and  
19 emotional distress in an amount above \$75,000 to be determined according to proof.

20 23. The acts and/or omissions of Defendant WILLIAM KOCH were willful, wanton,  
21 reckless, malicious, oppressive and/or done with a conscious or reckless disregard for the rights  
22 of plaintiff. Plaintiff therefore prays for an award of punitive and exemplary damages in an  
23 amount above \$75,000 to be determined according to proof.

#### 24 FIRST CAUSE OF ACTION 25 (False Imprisonment)

26 24. Plaintiff hereby re-alleges and incorporates by reference as though fully set forth  
27 herein all prior paragraphs of this Complaint.

28 25. Defendant William Koch and his agents (1) directly or indirectly restricted  
plaintiff's freedom of movement for an appreciable period of time without his consent or other

1 lawful privilege; (2) did so intentionally; and (3) plaintiff was aware that his freedom of  
2 movement had been restricted.

3 WHEREFORE, Plaintiff prays for relief as set forth herein.

4 **SECOND CAUSE OF ACTION**  
5 **(Civil Conspiracy)**

6 26. Plaintiff hereby re-alleges and incorporates by reference as though fully set forth  
7 herein all prior paragraphs of this Complaint.

8 27. Defendant William Koch and his agents agreed, by words or conduct, to falsely  
9 imprison plaintiff; they did subject plaintiff to false imprisonment; the plaintiff was deprived of  
10 his freedom of movement and placed in fear; and plaintiff's harm was caused by defendant and  
11 his agents' acts.

12 WHEREFORE, plaintiff prays for relief as set forth herein.

13 **THIRD CAUSE OF ACTION**  
14 **(42 U.S.C. § 1983 – Conspiracy)**

15 28. Plaintiff hereby re-alleges and incorporates by reference as though fully set forth  
16 herein all prior paragraphs of this Complaint.

17 29. William Koch conspired with other persons, including local law enforcement  
18 officers acting under color of state law, to accomplish a violation of the plaintiff's constitutional  
19 rights by intentionally restricting plaintiff's freedom of movement. There was no probable cause  
20 that a crime had been committed for which Defendant William Koch or a law enforcement  
21 official could arrest plaintiff.

22 WHEREFORE, plaintiff prays for relief as set forth herein.

23 **JURY DEMAND**

24 30. Plaintiff hereby demands a jury trial.

25 **PRAYER FOR RELIEF**

26 The Plaintiff prays for relief as follows:

- 27 1. For compensatory damages above \$75,000 according to proof;  
28 2. For punitive and exemplary damages above \$75,000 according to proof;  
3. For an award of attorney's fees and costs as permitted by law; and

1           4.       For such other and further relief as the Court may deem necessary and appropriate.

2  
3       **DATED:** October 11, 2012

**SCOTT LAW FIRM**

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6                               By: /s/ John Houston Scott  
                                      JOHN HOUSTON SCOTT  
                                      Attorney for Plaintiff